IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.4704 of 2001

DATE OF DECISION: January 8, 2007

Lachhman Singh and anothers

….Appellants

VERSUS

Gurminder Singh @ Ginda Singh and another

….

Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL

PRESENT: Shri M.L.Saggar, Advocate for the appellants.
Shri G.S.Punia, Advocate for the respondents.

Viney Mittal,J.(Oral).

The plaintiffs are the appellants before this Court. They have challenged the judgment and decree of the First Appellate Court dated October 4, 2001 whereby on an appeal filed by the defendant Gurminder Singh alias Ginda Singh the judgment and decree dated February 27,1997 passed by the trial Court were set aside and the suit of the plaintiffs was consequently dismissed.

The plaintiffs have filed a suit for permanent injunction claiming that there exists a street marked as ABCDEF and as such the defendants have no right to block the said street and the drain by raising any construction in the said property.

The existence of any such street marked as ABCDEF was denied by the defendants.

The learned trial Court decreed the suit filed by the plaintiffs.

However, on an appeal filed by the defendant No.1, the First Appellate Court re-appraised the evidence and made the following observations:

> "The evidence produced by the plaintiffs about the existence of the street at the spot is so much contradictory that no reliance is to be placed upon the same. It was stated by Baljit Singh, plaintiff No.2 (PW3) that the site in dispute is a common street and he is seeing the same in existence since the time he gained his senses. When, he was asked about the location of that street during his cross examination, he stated that the same is from East to West and then it turns towards South after touching their houses. In the map Ex. PW3/A, the direction of the street in dispute is from South to North. In fact, the street which is from East to West and then takes a turn towards South is another street, which abuts the house of the plaintiffs. Thus, according to this plaintiff that street is the street in dispute and not the street which has been described in the site plan as ABCDEF and shown in the red colour. Mehnga Ram made his statement in the Court (PW2). He stated that there is a road on the Southern side of the house of the plaintiffs and the street is on the Northern

side of their house. Thus, according to that witness also the street described by the plaintiffs in their plaint is not the street

which has been shown in the site plan in red colour but is some other street. The learned trial Court concluded that the site in dispute is a street by making observations in the judgment that the said fact has been admitted by defendant No.1 (DW1) during his cross examination. No doubt, the defendant admitted the existence of the street at the spot but according to him that street is on the northern side of the property which was purchased by his father. It is very much clear from his written statement and the evidence that the said property is situated on the eastern side of the alleged street in dispute. Thus, he has not admitted the existence of the street in dispute at the spot and in fact, he referred to some other street.

On the basis of the aforesaid observations, the learned First Appellate Court came to the conclusion that no such street, as claimed by the plaintiffs was proved to be in existence and the admission made by the defendant was with regard to existence of some other street. Consequently, the appeal filed by the defendant was partly allowed and the judgment and decree of the trial Court was modified to the effect that the defendants were restrained from

making any obstruction/blockage by way of raising construction in drain in dispute but with regard to the street, no relief was granted.

After hearing the learned counsel for the parties and on perusal of the record, I find that the findings of fact recorded by the

Appellate Court cannot be held to be erroneous in any manner, nor can it be held that the observations made by the Appellate Court are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

January 8, 2007 (Viney Mittal)
KD Judge